

Civil Revision Application No 1648 of 95

Date of decision: 07/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

NILESH M MASHRU,C/O SHAKTI TRADING CO.

vs

M/S INDIAN POTASH LTD. & 2

Appearance:

MR ASHOK L SHAH for Petitione..

Coram : MR.JUSTICE S.D.SHAH

ORAL JUDGEMENT

1. The petitioner original defendant No.2 has tendered application under Section 10 of the Code of Civil Procedure at Exhibit-17 in the City Civil Court at Ahmedabad for stay of the suit being Summary Suit No. 4880 of 1993. Such suit is instituted by M/s Indian Potash Limited, respondent No.1 herein.

2. It is the case of the petitioner that prior thereto the petitioner has instituted Civil Suit No. 236 of 1990 in the Court of Civil Judge (SD), Rajkot against the present plaintiff, namely, M/s Indian Potash Limited. It is their case that some of the issues involved in the two suits are directly and substantially arising in two suits and, therefore, subsequently instituted suit in the City Civil Court is required to be stayed. This submission is the submission of the petitioner defendant. The trial court has rejected such application by impugned order dated 31st March 1995 which has given rise to the present Civil Revision Application.

3. Having heard the learned counsel appearing for the parties and having given my anxious thought and consideration to the submission made, it cannot be gainsaid that some of the issues which would arise in the two suits are common and would directly and substantially arise in each suit. In that view of the matter, ordinarily, there are two courses open. The first procedure is to stay the subsequent suit filed under Section 10 of the Code of Civil Procedure which is held to be a mandatory provision by the Supreme Court. The second procedure is to order transfer of one suit to the other court where the first suit is instituted and to direct the first court to decide the suits after consolidating the same and after framing issues arising from the pleadings. Such a course could, of course, be adopted if the parties to the proceeding agree to such a course being adopted. In the present case, Mr. A.L. Shah, learned Counsel appearing for the defendant - Nilesh H. Mashru states that he has taken over the business of M/s Shakti Trading Company as a running concern and that present respondent No.2 and the present petitioner No.1 have no objection to the suit of the respondent No.1 plaintiff being Summary Suit No. 4880 of 1993 being transferred to the Court of Civil Judge (S.D.), Rajkot and both the suits being tried after consolidating the same and after framing issues based on the pleadings of the parties. Since the second course is one, which would lead to the disposal of two suits by competent court of civil jurisdiction and since the issues which directly and substantially arise in both the suits can be decided by one and the same court and since such an approach is more desirable and advisable approach so as to avoid inconsistent findings and inconsistent decrees, this court would adopt the second procedure and since there is concurrence of both the parties appearing before this Court through the learned Counsel, it is directed as under :

"Summary Suit No. 4880 of 1993 filed by M/s Indian Potash

Limited in the City Civil Court at Ahmedabad is ordered to be transferred to the Court of Civil Judge, S.D., Rajkot and is ordered to be heard and decided with after consolidating the same with Civil Suit No. 236 of 1990

and the Civil Judge (S.D.), Rajkot is directed to decide such suit expeditiously preferably by 31st of December, 1996 in accordance with law."

4. In the result, the Civil Revision Application succeeds to the aforesaid extent and the judgment and order of the learned trial judge is quashed and set aside and aforesaid directions are issued to be communicated to the City Civil Court as well as to the Trial court at Rajkot.

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